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No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1984

LAWRENCE D. CARVER
Petitioner

VS.

UNITED STATES OF AMERICA
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals for the Sixth Circuit

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QUESTIONS PRESENTED

Does the 16th Amendment to the U.S. Constitution provide for a Direct Tax on the Labor of individuals pursuing a vocation of Common Right?

Can a Citizen be Punished for the exercising of his Right to Petition the Government for a redress of Grievance?

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PETITION FOR A WRIT OF CERTIORARI

Lawrence D. Carver, acting on his own behalf herewith petitions this Honorable Court for writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.)

OPINIONS BELOW

The opinion of the three judge panel of the Sixth Circuit Court of Appeals, Appendix A, is not reported, however, said opinion and order is attached hereto. The order and opinion of the District Court is attached hereto as Appendix B.

"JURISDICTION"

The judgment of the Sixth Circuit Court of Appeals was entered on the 10th day of October 1984 A.D. The jurisdiction of this Honorable Court is invoked pursuant to the provisions of 28 USC 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION

ARTICLE I

SEC. 2—3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years and excluding Indians not taxed, three-fifths of all other persons.

SEC. 7—1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

SEC. 8. The Congress shall have power:

1. To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

AMENDMENT IX

The enumeration in the Constitution, of certain rights shall not be construed to deny or disparage others retained by the people.

AMENDMENT XIII

1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

AMENDMENT XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

TITLE 26 UNITED STATES CODE §61

§ 61. Gross income defined

(a) General definition.—Except as otherwise provided in this subtitle, gross income means all income from whatever

source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, and similar items; (2) Gross income derived from business; (3) Gains derived from dealings in property; (4) Interest; (5) Rents; (6) Royalties; (7) Dividends; (8) Alimony and separate maintenance payments; (9) Annuities; (10) Income from life insurance and endowment contracts; (11) Pensions; (12) Income from discharge of indebtedness; (13) Distributive share of partnership gross income; (14) Income in respect of a decedent; and (15) Income from an interest in an estate or trust.

NOTE

[1] There are additional points of law that need to be pointed out to this court, the existence of which cannot be avoided though they cannot be cited verbatum from Constitutional or Statutory provisions as required pursuant to Rule 21(f) of the Supreme Court Rules. These points are by no means allusionary. They carry the full force and effect of Law though not Law and are wantontly and vexatiously applied as Law. In fact nowhere in the provisions of Law are these definitions provided for, nor can be since the word [income] once put in the Constitution became a constitutional word to be defined only by the U.S. Supreme Court and not Congress nor the I.R.S. as Mr. Cummins points out in the Congressional Record of 1913 [pg. 3844 of the CONGRESSIONAL RECORD—SENATE August 28, 1913] in the discussions on what could be taxed as income.

These uncitable points of law which are nowhere defined but precipitously utilized are:

(1). The definition of [income].

(2). The definition of the "ability to labor" being synonymous with [income].

(3). The definition of the "source" of income being synonymous with the [Income] itself.

STATEMENT

Petitioner originally filed this cause of action, a suit for refund with demand for jury trial, against the Respondents on December 22, 1982, pursuant to 28 USC 1346(a).

The District Court entered an Order dismissing Petitioners Complaint for "Failure to state a claim upon which relief can be granted" on July 13, 1983, pursuant to Fed. R. Cir. P. 12(b) (6), Appendix B.

Petitioner filed a timely Notice of Appeal on August 23, 1983, after the Court denied him reconsideration on July 19, 1983, by taking Petitioners "Motion for judgment on the pleadings", docketed July 14, 1983, for that purpose pursuant to Local Court Rule 17(K).

Petitioner believing that the District Court Judge to be wrong and having misconstrued the facts, filed his Appeals Brief on February 6th, 1984 with the Sixth Circuit Court of Appeals.

The Appeals Court handed down its decision, affirming the District Court's Order on October 10, 1984, pursuant to Fed. R. App. P. 9 (D) 2, citing its order as a case "Not Recommended For Full Text Publication" and assessing the Petitioner with DOUBLE COSTS, pursuant to Fed. R. App. P. 38, Appendix A.

The Sixth Circuit Court of Appeals denied a Timely Request For An Extension Of Time To File A Motion For Reconsideration on October 24th, 1984 without cause.

It is from that Order of the Court of Appeals dated October 10, 1984 A.D., that Petitioner brings this, his PETITION FOR A WRIT OF CERTIORARI.

REASONS FOR GRANTING WRIT

This Petitioner believes it to be necessary and expedient to first touch upon ancillary matters of importance to an impartial and unemotional determination of the issues. Certain of the views herein may erroneously be considered, on first reading, to be either a denial of any governmental constraints on the activity of the individual or contumacious of this court. Neither conclusion would be appropriate. Rather, the hoped for conclusion to be reached is that the time is at hand to restore the dignity of our republic by an even-handed application of those principles upon which the republic is based without resort to the intellectual gymnastics which have regretably come to signify federal case law.

GOVERNMENT — ITS PURPOSE AND STRICTURES

Without attempting a scholarly review of the history of the United States of America, it is nonetheless essential to recall to mind those simple principles and truths in which each of us has, hopefully, been instructed in our formative years. No reference is made herein to the Federalist Papers or other sources from which much truth is to be gained. Rather, this Petitioner believes it to be of paramount importance to avoid citations in this area as much as possible for one essential reason — the beauty, the simplicity and the ultimate truth of our republic are to be sensed rather than researched. Being sensed, no amount of executive, legislative or judicial verbiage can alter the truths so implanted in the individual.

Let us start with the title given to our republic — United States of America. The name itself instructs us that we are a number of states united for a common purpose. What is that common purpose? Simply put, to assure to the people — the creatures of God and the creators of Governments — those ideals expressed in the Declaration of Independence.

We must never forget that God created man — not governments — in His own image. The written manifestations of that truth all bear witness to the dignity of God's creation and exalt the rights and privileges of God's creation simply because he is that — a creation of God and an example on earth of His magnificence and omnipotence.

Man, being the creation of a divine being, is bound to follow the natural law. It was and is to assure the temporal obedience to the natural law that man created government. Government is essentially nothing more than the exercise by God's creatures of their collective efforts to adhere to the natural law. The various homicide statutes, for example, are nothing more than a codified version of the biblical proscription of killing.

What is said here applies not only to the federal government, but also to every state and local government. Each and every one is the collective effort of God's creatures to more easily and uniformly assure the temporal obedience to divine

law. It is not the edicts of man, singly or collectively, to which obedience is owed. It is to the collective judgment of humans attempting to assure adherence to the laws of their Creator.

Man, the creation of God in His own image, has created governments to aid him in seeking the fulfillment of the will of the Creator. It follows, therefore, that governments are answerable to man — its purposes limited to those for which they were created by man. To deny the subservience of a government to man is to deny the fundamental principles upon which our republic was created.

Where have we gone wrong? Why is it that man now fears, and is aided and abetted in fearing, his own creation? We cannot answer that, but we know that it is wrong. Why do men sin against the natural law? We cannot answer that either, but we know that it is wrong. It would seem that to condone the wrong would only perpetuate it. Isn't it about time that man collectively attempt to right the wrong? Isn't it about time that we tell our creation that enough is enough and that we get back to the fundamental truths? Isn't it about time that we tell our creation that they have lost sight of the reason for their existence — that they must accept our will because our will was divinely created?

One must ask what the foregoing has to do with this tax litigation. It has everything to do with it. The power to tax was a power given to the creation of man and must be limited to the extent that it was limited by the creator of the power. To endeavor to exceed that power is to sin against its creator — and there are few public servants today who should have time for anything other than a litany of *mea culpas*.

THE POWER TO TAX GIVEN TO THE FEDERAL GOVERNMENT BY ITS CREATORS

Man, in his collective judgment to create a government to serve his purpose, realized that his creation would need revenue to carry out its purposes as limited by the creators. From our

school days we can recall that we created a federal government to aid us in our purposes as we have created other governments of more limited scope. To that federal government we assigned certain powers because common sense dictated that they be given. Were the same act of creation to take place today, we would realize that fifty separate currencies would be inconceivable. We would realize that one state should not be allowed to tax imports from another state. In short, we would give to our federal creation what its original creators gave — those authorities and only those authorities necessary to prevent chaos and distraction from the essential goal of service of divine will on earth. It is nothing short of tragic that those we have endowed with the exercise of the powers have turned those powers against us. Even more tragic is the fact that, until now, we have allowed this to happen. What was created to avoid chaos has created chaos to the detriment of the creators. On a divine level, we know the reward for those who so act. On a temporal level, nothing less should be expected.

To return to the point, our creation would require revenue to fulfill the purposes of its creation. Realizing that, the creators conferrred powers to raise that revenue. In the document of creation, the *Constitution of the United States*, the creators provided one of its creations, the Congress, in Article 1, Section 8 with the following:

> "The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States, but all Duties, Imposts and Excises shall be uniform throughout the United States;***
>
> "No Capitation or other direct Tax shall be laid, unless in Proportion to the Census or Enumeration hereinbefore directed to be taken."

Another important provision of the document of creation is contained in Article I, Section 7 thereof, as follows:

> "All Bills for raising Revenue shall originate in the House of Representatives;"

Reading the foregoing provisions, what were the creators telling their creation? Common sense tells us that the message conveyed was that the federal government — the creation — should sustain itself and fulfill its purposes by the collection of duties, imposts and excises.However, the creators being fair minded, realized that unusual events might arise where duties, imposts and excises would not be sufficient. It, therefore, provided for the laying of capitation and other direct taxes — but in a specific manner. The specific manner was by apportionment among the state according the population — the same manner in which members of the House of Representatives were elected (*Constitution of the United States*, Article I, Section 2).

One begins to see the wisdom of the creators in requiring that direct taxes be apportioned and in further requiring that all bills for raising revenue originate in the House of Representatives — then the only body of Congress elected by the creators. The message to the creation is plain. It is that if the Representatives believed that some exigent circumstance required the laying of a direct tax, that the burden of that tax must be felt proportionately in each and every district of the Representatives so that, in the not so distant future, the Representatives could be called to account for their action with respect to that direct tax. It was a simple and seemingly effectual way in which to hold each representative seeking to raise revenue by direct means accountable to his masters. Phrased in another manner, it was a device to keep the imposers of the burdens close to the people who could remove them.

The whole scheme of the creators was to keep as close to themselves as possible, for the specific purpose of deposing them, those persons who would impose the burdens. The creators in effect retained a bi-annual review of whether exigent circumstances did exist to warrant the immposition of a direct tax burden.

For the most part, the design of the creators worked successfully. Little did the original creators realize the machinations and deceit which, with judicial absolution, would destroy

the control and lead to the relentless pursuit of the goal of removing the imposers of the tax burdens as far from the people as is possible. Little did the original creators realize (for they did not so design it) that state and local governments — to them the primary governments where control is most easily exercised — would be relegated to being essentially middlemen in passing on the largesse of the strictly limited federal government. They would not have imagined that state and local governments, instead of being the prime legislative units subject to close scrutiny, would become essentially useless bodies with little to do except periodically alter the age of majority, devise exotic lottery schemes and change the permissible blood alcohol content of the driver. Such state and local governments have nothing more substantial to do because they have abandoned their rights and perrogatives to the giant in Washington.

The role of the judiciary in permitting the unconsented change in our form of government will be commented upon later. First, however, it is deemed appropriate to consider the dilemma faced by the tax litigant represented by this Petitioner.

THE IMAGE OF THE TAX LITIGANT

This Petitioner, as other tax litigants similarly situated, enters court carrying the burden unfairly imposed by representatives of the government created by his ancestors or predecessors and added to by the judiciary. The burden is essentially one concerning the image of the litigant. He is branded by those meant to serve him as a "tax protestor" or "illegal tax protestor." He is pictured as an extremist intent on destroying the federal government by denying to it the revenue to assure its legitimate function. None of the characterizations are proper and none of the imputed motives are correct. Rather than write in scurrilous words of such a litigant, the courts would be well served in promptly and effectively reprimanding those who employ the characterizations and impute false motives.

The type of tax litigant of whom we write asks simply for an adherence by the creation to the will and mandates of its creators. He asks that the creation be limited to its *legitimate*

functions and that it exercise only those powers granted it by its creators and in the manner mandated by the creators. He asks simply for a reasoned examination by the judiciary of a question of significant constitutional import. To date we have been unable to find such a reasoned examination and, until such a reasoned examination is forthcoming, this type of litigation will continue.

"FRIVOLOUS" SANCTIONS AND THE RIGHT TO COUNSEL

The created institution thru their attorneys have characterize this litigation as "frivolous." The assumption is made because the characterization is always made where convenient and tricky phrases are used to cover the embarrassment of meritless arguments and constitution-snubbing.

The question presented by this litigation — whether the pay of a citizen following a vocation of common right constitute income is not novel. It has been presented often in the past. Nor has the disposition of previous litigation of this nature been novel — dismissal of the complaints. What would be novel would be a considered judicial opinion addressing the arguments of the Petitioner.

Why should this action and similar litigation be deemed frivolous? The question presented by this litigation has been answered by the courts in the following various manner:

> "One's gain, ergo his 'income', *from the sale of his labor* is the entire amount received therefor without any reduction for what he spends to satisfy his human needs." *United States v Buras*, 633 F2d 1356 at page 1361 (9th Cir., 1980) (Emphasis supplied)

> "* * * a tax on wages is either an indirect *tax on the ability to labor* or falls within the common definition of income — gain from capital, labor or the combination of capital and labor." *Carver v United States of America*, (District Court, E.D., Michigan, 1983) (Emphasis supplied) Supra

Common decency prevents us from citing other examples of judicial confusion and embarrassment. If the courts themselves cannot agree on why earnings from a vocation of common right constitute taxable income, why is the tax litigant deemed involved in frivolous activity when he pursues an action seeking to establish that they are not? Judge Cohn's opinion is cited to show that the lament of the federal courts that the issue is so clear that it need not be seriously considered has apparently escaped the District Court of the Eastern District of Michigan. As to the "why" of the frivolous holdings, the answer which readily presents itself is not flattering to the federal government or to the judiciary. The United States of America cannot be grievously injured by an honest examination of the issue and a lucid discussion of the underlying principles involved in its determination. It can only be irreparably harmed by a continued avoidance of the issue and a less than forthright discussion of the various judicial opinions which have given a semblance of legitimacy to prior acts which are erroneous at best and treasonous at their worst.

No attempt is made to assert that prior litigation in this vein has all been meticuously prepared and presented. Many of the pleadings and memoranda have been confusing. In truth, this document may be viewed by many to be of no better quality. It does, however, have the unique quality of being an honest endeavor and hopefully our adversaries will be afflicted by a similar contagion by contact with it.

A primary reason for some of the poorly presented litigation is that it has been largely *pro se* in nature i.e. by the citizen without attorneys. In many respects, the various sanction rules are such that an attorney must necessarily be wary of involving himself in such an action for fear that sanctions will be imposed upon him. (See Rule 38, *Fed. R. App. P.; Tax Equity and Fiscal Responsibility Act of 1982*, Pub. L. 97-249, Stat. 574, Secs 292 (b) and (e) (2)). Such is the case despite the fact that the attorney believes the contention of the tax litigant to be meritorious.

Taken together, the continued judicial characterization of actions such as the instant action as frivolous and the sanctions

which can be imposed in connection with frivolous litigation effectively forclose a litigant of this type from the aid of counsel. It is a virtual guartantee that the issue will never again be presented to a court other than in a *pro se* posture. Inconceivable as it may seem, the virtual denial of a constitutional right is used as a basis for foreclosing a certain type of litigation. And, again, we have judicial cooperation in government by fear.

It is not denied that the federal courts are burdened by a multitude of pending cases. In many respects the courts are the architects of their own misfortune. Were they to limit their consideration to those matters constitutionally within their purview, the problem would largely vanish. It is the judicial encroachment or usurpatation hereinafter mentioned which is the basis for calendar congestion, while matters such as the within action are treated in a summary, thoughtless manner.

THE JUDICIARY AS SEEN BY THE TAX LITIGANT

A tax litigant, such as this Petitioner, carries a belief that, as he enters court, he faces two adversaries — the Department of Justice (sic) and the judge. Why should such a belief be held? He knows the political process to some degree. He knows that, prior to nomination and confirmation, a federal judge is investigated by an arm of the Department of Justice — his adversary. He knows that, without the concurrence of the Department of Justice, the judge would not be assigned to the litigation, would not be a judge. He knows that the disposition of pending litigation is discussed by the juidiciary with non-judicial personnel for its possible effect on the political process (See Ehrlichman, *Witness to Power,* Simon and Shuster, Ch.8). To the litigant, therefore, the judge bears the imprimature of his adversary. The creators could hardly have envisaged such a prostituting of their creation by the expediency known as the political process.

In the never-ending creation of administrative agencies and quasi-courts, one is hard put to find a forum in which the trier of the facts is not a member of or approved by his adversary. What kind of distortion of the contitutional process is that? In the

name of expeditious determination we have surrendered to the usurpers the last remaining hope for the salvation of the republic. We lament the departing of the simple and beautiful statement contained in the Seventh Amendment to the *Constitution of the United States:*

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, * * *."

The creators knew full well the necessity of the jury system. To have the true sense perverted, as it has been by judicial blessing of the administrative agencies and quasi-courts, is to deprive us of the gallantly won freedoms by actions of those who have never joined the battle.

The pervasive shunting of legitimate controversies to improper forums or the summary disposition of them is the result of the new role of the judiciary. No longer is the court the forum conceived by its creators. It is now the formulator of the social and economic policies of our nation. It has by its own efforts, and the default of our executives and legislators, become the policy making body of this nation in contravention of its constitutional purpose. It is another step in the process of removing the makers of policy from the electorate — another obstacle to the control of the created by the creators. The perversion of the constitutional process should be frightening even to the perverters. One can anguish over the loss of those ideals and principles which accompanied our birth, but he must fear as Armageddon what lies ahead, for the new elite are not yet known to him.

With the background complete, we can now address ourselves to the substantive issue of this litigation and the various authorities required to be considered.

THE SANITY THAT IS "POLLOCK"

In an opinion of remarkable clarity, not unusual in that time frame, the Supreme Court decided *Pollock v Farmers' Loan & Trust Company,* 157 US 429 (1894), rehear. 158 US 601 (1895).

The issue before the court was a simple one — whether or not a tax on income from real property and invested personal property was a direct tax requiring apportionment. The court decided that it was such a direct tax.

The precise issue was framed by the court as follows:

> "And if, as the Constitution now reads, no unapportioned tax can be imposed upon real estate, can Congress without apportionment nevertheless impose taxes upon said real estate under the guise of an annual tax upon its rents or income?" 157 U.S. at page 580.

The court held, quite properly, that the Congress could not. The holding takes on added significance when it is understood that what the court there prevented was an attempt by the Congress to circumvent the limitations placed upon it by subterfuge. The ruling should have alerted all future courts to scrutinize most closely attempts by the legislative branch to exceed its powers in fiscal matters. Tragically, the ruling had no such result. Instead, it gave rise to novel methods to confiscate the substance of the people and, even more tragically, to judicial connivance in sanctifying the new subterfuges.

The writers believe that the majority of the *Pollock* court foresaw to a large extent the terrible direction in which it was proposed to take this republic. The majority went to extraordinary lengths in reviewing not only the constitutional authority to tax, but also the purpose of the court itself. It may be that the statements of the majority will be characterized as dicta. Let us never forget that loyalty to the republic and the preservation of the Constitution can never be dicta.

The *Pollock* court in clear and unmistakable language distinguished a direct tax from an indirect tax by one criterion — can the burden of the tax be shifted to others. And so it was said:

> "Ordinarily, all taxes paid primarily by persons who can shift the burden upon some one else, or who are under no legal compulsion to pay them, are considered indirect taxes; but a tax upon property holders in respect of their

estates, whether real or personal, or of the income yielded by such estates, and the payment of which cannot be avoided, are direct taxes." 157 US at page 558.

Have you tried to pass on your income tax lately?

"BRUSHABER" — THE SHAME OF THE JUDICIARY BEGINS

Following *Pollock* and the ratification of the Sixteenth Amendment, the Supreme Court was called upon to again examine the matter of direct and indirect taxation. It did so in *Brushaber v Union Pacific Railroad Company*, 240 US 1 (1914), the primary basis for the federal government's claim that it may tax the earnings of an individual following a vocation of common right.

After properly asserting that the Sixteenth Amendment gave to the Congress no new power to tax (240 US at pages 10-11), the court proceeded to perpetrate a travesty in interpreting the *Pollock* opinion. The travesty is nowhere more apparent than in the following:

> "Moreover in addition the conclusion reached in the *Pollock case* did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, *but on the contrary recognized the fact that taxation on income was in its nature an excise* entitled to be enforced as such unless and until it was concluded that to enforce it would amount to accomplishing the result which the requirement as to apportionment of direct taxation was adopted to prevent, in which case the duty would arise to disregard form and consider substance alone and hence subject the tax to the regulation as to apportionment which otherwise *as an excise* would not apply to it." 240 US at pages 16-17 (Emphasis supplied)

Pollock neither stated nor implied any such thing — that a tax on income is an excise tax, an indirect tax. To the contrary, the *Pollock* court stated:

"If the question had related to an income tax, the reference would have been fatal, as such taxes have been always classed by the law of Great Britain as direct taxes." 157 US at page 572

Similarly,

"* * * it is apparent: * * *2. that under the state systems of taxation taxes on real estate or personal property *or the* rents or *income* thereof were regarded as direct taxes." 157 US at page 573 (Emphasis supplied)

And the *Brushaber* court conveniently failed to state that the argument of the government in *Pollock* was that income from property is a duty, an indirect tax, an argument which the *Pollock* court found to be without merit. One would also inquire as to the necessity for the Sixteenth Amendment if a tax on income were, in fact, an indirect tax.

Apparently the *Brushaber* court found solace in the following citation from *Pollock*:

"We have considered the act only in respect of the tax on income derived from real estate, and from invested personal property, and have not commented on so much of it as bears on gains or profits from business, privileges, or employments, *in view of the instances in which taxation on business, privileges, or employments has assumed the guise of an excise tax and has been sustained as such.*" 158 US at page 635 (Emphasis supplied)

If the foregoing citation is considered an authority that an income tax is an excise tax, God help the gullible. The word "guise", as used by the *Pollock* court, is meant to be understood as one of derogation. The quoted language is one more attempt by the *Pollock* court to alert the citizens of this republic to the chicanery involved even then in the field of taxation — a serious attempt to call attention to the impropriety of classifying an income tax as an indirect tax. Why the warning? Because the *Pollock* court took great pains to demonstrate the intention of the creators that the federal government is to live, except in exigent circumstances, on its indirect taxes.

The question then arises as to why the *Brushaber* court took such pains to construe *Pollock* as an acknowledgment that an income tax is an excise tax. This Petitioner believes the answer to that question, while unflattering and even condemnatory, is plain. It was an attempt to insert the notion which has become a familiar theme in judicial circles and in a variety of other matters — the notion that a tax on income is a tax on a state granted privilege.

Within the factual context of *Brushaber*, this writer has no quarrel with the ultimate result — the sustaining of a tax imposed on the income of a corporation. Clearly the use of a corporate form is the exercise of a state granted privilege and, as such, can be taxed as an excise so long as the rule of uniformity is observed. Why, then, did the court indulge itself in an unnecessary and distorted construction of *Pollock*? It is submitted that the purpose was to state matters for the future to justify the confiscation of the property, the Labors, of persons following vocations of common right and to appear not to change existing law in so doing. To illustrate, the *Brushaber* court alleged that the *Pollock* court recognized that the law which taxed income from other classes of property than real estate and invested personal property, that is income from "professions", "trades", "employments" and "vocations", validly imposed such tax. And so the following language from *Brushaber*:

> "The whole tax was however declared unconstitutional on the ground that to permit it to thus operate would relieve real estate and invested personal property from taxation and 'would leave the burden of the tax to be borne by professions, trades, employments, or vocations; and in that way what was intended as a tax on capital would remain in substance a tax on occupations and labor,' (Id. P. 637) a result with which it was held could not have been contemplated by Congress." 240 US at page 17

It simply isn't true. To be sure, the *Pollock* court declared the whole of the act it considered to be unconstitutional and the quoted language from *Pollock* was in fact used. But far from

recognizing the validity of a tax on "professions, trades, employments, or vocations", the Pollock court, as shown by the citation hereinbefore referred to, did not consider that portion of the tax and in thinly veiled terms, disapproved of same.

Again the question arises as to why the *Brushaber* court would purposely misconstrue the prior holding; why it would even bother to comment on the validity of a tax on "professions, trades, employments, or vocations" when it was conidering only a tax on corporate privileges. We submit that the purpose was not to demonstrate that a tax on income was an indirect tax, but that the purpose was to condition the public to an acceptance of a tax on their substance. We further submit that it is one of the first instances in which the Supreme Court of the United States ran with the ball which should legitimately have been carried by the executive and legislative branch within the parameters of the Constitution of the United States. In short, it was a gigantic political hoax perpetrated upon the people of this Republic.

"BRUSHABER" — THE HOAX THAT SHOULDN'T WORK

As we have seen, *Brushaber* contorted a tax on income into an excise tax. So we will assume, for the sake of argument, that it is truly an excise tax. Does the assumption save a tax on the earnings of one pursuing a vocation of common right? Certainly not — there is no state granted privilege which can be taxed and a state granted privilege is a *sine qua non* of an excise tax in the context of this litigation.

Aside from the common sense conclusion that there is no state granted privilege involved — we exist by the will of our Creator and not by the will or at the sufferance of the state — there is certainly sufficient authority for the conclusion that, in following a vocation of common right, an individual is exercising a divinely granted right and not a state granted privilege.

> "The liberty mentioned in that (Fourteenth) amendment means not only the right of the citizen to be free from mere physical restraint of his person, as by incarceration, but the

> term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation; * * *." *Allgeyer v Louisiana,* 165 US 578 at pages 589-90

Similarly, as Justice Field in his concurring opinion in *Butchers' Union Company v Crescent City Company,* 111 US 746 (1884) stated in quoting from Adam Smith's *Wealth of Nations*:

> "The property which every man has in his own labor, as it is the original foundation of all other other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hand, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property." *Id.* at page 757

Another expression, and perhaps the most eloquent one, is contained in the concurring opinion of Justice Bradley in the *Butchers' Union Company* case at page 762:

> "The right to follow any of the common occupations of life is an inalienable right. It was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence, which commenced with the fundamental proposition that 'all men are created equal, that they are endowed by their Creator with certain inalienable rights; that among those are life, liberty and the pursuit of happiness.' This right is a large ingredient in the civil liberty of the citizen."

Further, at page 764:

> "I hold that the liberty of pursuit — the right to follow any of the ordinary callings of life — is one of the privileges of a citizen of the United States."

It is noted that the word "right" and the word "privilege" are used interchangably. The sum and substance, however, is

that it is a "right" or a "privilege" conferred by the Creator and not the state granted privilege which forms the basis of and on which an excise burden may be imposed.

Therefore, an individual following a vocation of common right — a right granted by his Creator — is exercising no state-conferred privilege and is consequently not subject to taxation under the *Brushaber* excise tax doctrine. It is, therefore, incongruous for the court in *Carver v United States of America, supra,* to attempt to contort the tax on earnings into an "indirect tax on the ability to labor." Such an idiocy is a prime example of the legacy of *Brushaber.* Similarly, the "sale of labor" argument of the *Buras* court (and many other courts) attempts to contort a contract for labor into a privilege. It is no privilege but rather a right inherent in the ownership of any property and a part of its inalienable character.

"INCOME" AND OTHER FALSEHOODS

The furor, of course, is generated by attempts of the Congress to tax "income" which, as a constitutional term, first appears in the Sixteenth Amendment to the *Constitution of the United States:*

> "The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

We are instructed as to the Sixteenth Amendment as follows:

> "We are of the opinion, however, that the confusion is not inherent, but rather arises from the conclusion that the Sixteenth Amendment provides for a hitherto unknown power of taxation* * *."
>
> *Brushaber v Union Pacific Railway Company, supra,* at pages 10-11

Similarly,

> "That the authority conferred upon Congress by (Section) 8 of Article I 'to lay and collect taxes, duties, imposts and excise' is exhaustive and embraces every conceivable power of taxation has never been questioned, or, if it has, has been so often authoritatively declared as to render it necessary only to state the doctrine. And it has never been questioned * * * that there was authority given, as the part was included in the whole, to lay and collect income taxes." *Id.* at pages 12-13

And so we learn that the Sixteenth Amendment conferred on the Congress no new power of taxation and that Article I, Section 8 of the Constitution is the all-encompassing power of taxation. And yet we are told as a justification for the tax herein considered that:

> "* * the Sixteenth Amendment is broad enough *to grant Congress the power* to collect an income tax regardless of the source of the taxpayer's income." *United States v Buras, supra,* at page 1361

If *Brushaber* instructs us that the Sixteenth Amendment gave to Congress no new taxing power, why does the Ninth Circuit state that it "grant(s) Congress the power?" And we are characterized as frivolous!

We now know that the power to tax incomes is inherent in Article I, Section 8, although the word "income" appears for the first time in the Sixteenth Amendment. Since it appears in the Constitution, as amended, it is, therefore, a constitutional term. Being a constitutional term, it is beyond the power of the Congress to define it. The duty falls to the judiciary.

> "Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully exercised." *Eisner v Macomber,* 252 US 189 (1920), at page 206

Since the courts, as opposed to the Congress, have the authority to define "income", we must look for the judicial definition of the word. The generally accepted definition is that it is *gain* or *profit* from labor, from capital, or from both combined. Such a definition seems fair enough. How, then, can we impute a gain or a profit to a situation in which an individual pursuing a vocation of common right receives a wage in return for his labor? Simply stated, we cannot. By no rationalization, especially since the advent of trade unions when the actual value of the labor is negotiated between the employer and the representatives of the employees, can the fact be altered that it is an exchange of properties of equal value with no element of gain or profit involved. Indeed, it was long ago written:

> "And in the same house remain, eating and drinking such things as they give: for the labourer is worthy of his hire." *Luke* 10:7

There is no need to cite the various judicial opinions claiming such an argument to be erroneous. Not one court has been able to put forth a convincing argument that it is anything but an even exchange — yet they feel constrained to make attempts. The feeble attempts are made necessary by the error or deceit of *Brushaber* and no court has the courage to speak out on the matter. Common sense tells us that the judicial opinions are knowingly and deliberately erroneous and that they are nothing more than a continuation of the shame of the judiciary in carrying the unpopular ball for the legislative and executive branches so as to thereby insulate the useless rascals from the wrath of the electorate. It will no longer succeed.

The greatest shame lies in the fact that the courts, commencing with *Brushaber*, have changed the traditional and solely proper concept that the people of this republic will fund the federal government, and, in the course of so doing, will exercise their power to veto those undertakings of their creation which they deem to be improper. A view of the history of this Republic before and after the *Brushaber* decision makes it abundantly clear what it has cost the people in terms of lives, money, suffering, etc. Had they been allowed to exercise their

right of veto, great suffering and tragedy would have been avoided because of the innate common sense of the people in whom the creators had the greatest confidence — a confidence not shown in those who would be elected or appointed to guide the destinies of the creation. To paraphrase a question popular in the past few years, "Are you and your deceased sons better off today than you were in 1913?"

It is patent that Thomas Jefferson, one of the greatest of the creators, was tragically correct when he penned in 1821:

> "It has long been my opinion, and I have never shrunk from its expression * * * that the germ of dissolution of our federal government is in the constitution of the federal judiciary, an irresponsible body — for impeachment is scarcely a scarecrow—working like gravity by night and by day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief, over the field of jurisdiction, until all shall be usurped from the States, and the government of all be consolidated into one.
>
> "To this I am opposed; because, when all government, domestic and foreign, in little as in great things, shall be drawn to Washington as the center of all power, it will render powerless the checks provided of one government on another, and will become as venal and oppressive as the government from which we separated."

And what was one of those venal and oppressive characteristics of the government from which we separated?

> "He has erected a multitude of New Officers, and sent hither swarms of Officers to harrass our people, and eat out their substance." *Declaration of Independence* (1776-1913)

The fulfillment of the Jefferson prophecy is alluded to in current function where the author, in delineating the triumph of the communist encroachment, states:

> "No . . . you are going to witness an imperial judiciary because judges are learning to like the power they've given themselves. * * *

* * *

"* * * Alexander Hamilton said the judiciary would be the weakest of the three departments of power. He said the courts would have no influence over the sword or the purse, no direction of the strength or of the wealth of the society. It would have neither force or will, merely judgment. Well * * * you've come a very long way from the original concept of your judicial power. The courts have exceeded their appointed task." Cline, Jr., *The Attorney Conspiracy*, Arbor House. Ch. 25

OTHER IMPORTANT INDICIA OF THE TRUTH

The question of whether compensation for services rendered constitutes "income" has been addressed by the highest courts of several states. The following citations are submitted to show the thinking of those courts with respect to the issue:

"Reasonable compensation for labor or services rendered is not profit." *Lauderdale Cemetery Ass'n v Matthews*, 345 Pa 239, 47 A2d 277 at page 280

"Consequently, we hold that the 'contract for profit' referred to in Code, (Section) 13-266 (c) does not include a contract of employment * * *." *Oliver v Halstead*, 196 Va 992, 86 SE2d 858 at page 860

"Compensation for labor can not be regarded as profit within the meaning of the law. The word 'profit', as ordinarily used, means the gain made upon any business or investments — a different thing altogether from mere compensation for labor." *Commercial League Associations of America v People ex rel. Needles, Auditor*, 90 Ill. 166

It must be remembered, in reading the foregoing citations that these are not *pro se* plaintiffs speaking. Rather, the thinking reflects the unanimous judgment of the justices of the highest courts of three states of the union. If such judicial expertise is so convinced, why am I charged with being frivolous?

To cite an example of how the Commonwealth of Pennsylvania circumvented the problem, in typical *Brushaber* fashion, there was enacted the following:

> "(a) There is hereby imposed an annual tax to be paid by resident individuals, estates or trusts at the rate of two and two-tenths per cent *on the privilege of receiving each of the classes of income* hereinafter enumerated in section 303." 72 P.S. 7302 (Emphasis supplied)

The travesty of the situation is not so much that the legislators of the Commonwealth contorted a God-given right into a privilege as it is that a sovereign state mimics the federal government in perverting the law when it should be demanding of the same federal government that it limit its activities to those specifically granted to it and to return to the states their primary right to subjects of direct taxation, a point made very clear by the *Pollock* court.

> "The founders anticipated that the expenditures of the States, ther counties, cities, and towns, would chiefly be met by direct taxation on accumulated property, while they expected those of the Federal government would be for the most part met by indirect taxes. And in order that the power of direct taxation by the general government should not be exercised, except on necessity, and, when the necessity arose, should be so exercised as to leave the States at liberty to discharge their respective obligations, and should not be so exercised, unfairly and discriminatingly, as to particular States or otherwise, by a mere majority vote, possibly of those whose constituents were intentionally not subjected to any part of the burden, the qualified grant was made." 158 US at page 621

> "They (the states) retained the power of direct taxation, and to that they looked as their chief resource." 158 US at page 620

> "If, by calling a tax indirect when it is essentially direct, the rule of protection (apportionment) could be frittered away,

> one of the great landmarks defining the boundary between the Nation and the States of which it is composed, would have disappeared, and with it one of the bulwarks of private rights and private property." 157 US at page 583

Ever-vigilant New York State, always at the forefront of the sovereign states in the deprivation of individual rights, chose a different approach. Under the guise of preventing the exploitation of its laborers, it convinced the electorate in 1938 to adopt Article I, Section 17 of its constitution in the following language:

> "Labor of human beings is not a commodity nor an article of commerce and shall never be so construed. * * *"

With that simple language, the property right of an individual in his labor (the source of all wealth as we have learned) was attempted to be destroyed. Where is it all to end? And, if the labor of a human being is not an article of commerce, it cannot be sold. What, then, happens to the theory of the *Buras* court which based its finding of "income" on the finding of a sale of labor? What a tangled web is weaved when we practice to deceive.

We have noted that in both the Petitioners case and the legislature of the Commonwealth of Pennsylvania, in attempts to create a privilege in order to satisfy the requirement for an excise tax, have used the "ability" or "privilege" of receiving earnings as the basis for sustaining the validity of the "income tax." Again we see an example of a failure to perceive the logic of *Pollock* or the willful distortion of its meaning. In finding a tax on the income from real estate to be a direct tax upon the real estate itself, the court carefully noted that real estate is nothing without the income which normally flows therefrom. Similarly, the labor of the individual is nothing when divorced from the earnings therefrom. Therefore, the tax upon the earnings is a tax upon the right to labor itself and, as such, is constitutionally improper. (See *Murdock v Pennsylvania* 319 US 105 (1942)

The insatiable drive to create a privilege where none exists stems solely from the admonition of the *Pollock* court that the

federal government sustain itself on its indirect taxes. Those indirect taxes being insufficient to finance the desired plunge into socialism, we have judicial connivance in putting into the hands of the federal government sums to which it is not rightly entitled. The people of this republic, since *Brushaber,* have been unlawfully deprived of their right to control the fiscal matters of the nation and, through such fiscal control, to guide the course of this nation. The results of the deprivation have been almost incessant wars, foreign adventures and depressions of varying descriptions. What was a national debt of several million dollars now is in the trillion dollar range. The promise of *Brushaber* has been fulfilled — slavery has returned. Remember those immortal words of James Ottis:

> "I say men, for in a state of nature no man can take my property without my consent; if he does, he deprives me of my liberty and makes me a slave. If such a proceding is a breach of the law of nature, no law of society can make it just." James Ottis, *The Rights of the British Colonies Asserted and Proved,* (1764).

This court is asked to take a big step for the Republic. The greatest crime is to do nothing or to blindly follow the course which has been set.

It is often said that the power to tax is the power to destroy. (*McCulloch v Maryland,* 17 US 316 (1819) Let it be plainly understood that the ultimate object destroyed is the republic itself.

Let it be further understood that taxing in an improper manner likewise destroys. The creators formulated a particular system for direct taxation which is being violated by all three branches of the federal government. Such violation removes completely the intended power of the people to deny to the federal government "folly money" and to essentially dictate to our alleged servants what circumstances the people believe to be truly exigent. It is to prevent the return of this power to the people, where it rightfully resides, that we are saddled with the obsceneties of *Brushaber* and its illegitimate descendants.

We thus have a situation where the tax herein considered is demonstrably not an excise tax. *Pollock* has already decided that it is not a duty. It is not, in any respect, an indirect tax. It is simply a direct tax on the inalienable right to pursue a vocation of common right, a tax which cannot be constitutionally imposed in the manner in which it is imposed.

This court, like the *Pollock* court, should show concern about the federal government's need for revenue. But, like the *Pollock* court, it should conclude that the preservation of the integrity of the constitutional process must take precedence over any current, short-term need for revenue. The taxing authority granted to Congress is so broad that the means of finding one or more sources of revenue should not pose a difficult (as opposed to politically popular) problem. Let us hope that the Congress will look this time for a solution based upon the wisdom of *Pollock* and within the parameters of the Constitution, and not seek the answer in the platform of the Communist Party.

Those who oppose a decision favorable to this Petitioner do so out of a fear that the people of this republic would so act as to restore some semblance of reason to the fiscal affairs of the republic. And such fear exists though historically the people of this republic have never denied to its creation adequate funds for its legitimate undertakings.

The Constitution of the United States is being daily violated by all three branches of the federal government for the simple political purpose of saving political hides — hides which should be on public display as an example for all that acts of treason do not go unpunished. It is *not* the concern of the judiciary whether one or another of the politically motivated programs is funded or adequately funded. It is *not* the concern of the judiciary to tell us where a second trimester abortion can be performed. It is *not* the concern of the judiciary to tell us what school we send our children. It *is* the concern of the judiciary *only* to tell us whether the pitifully few initiatives of the executive and legislative branches are constitutionally undertaken. In the context of this litigation, the initiative was and is

not constitutionally undertaken because of the lack of courage and fortitude to undertake it in a proper manner. It is high time that the highest judiciary of this land summon the courage and speak clearly the truth. Let it be understand that they act only by the consent of the governed as the members of the Department of Justice act and serve only with the consent of the governed.

> " 'The people must, in effect, themselves, mediately or immediately, possess the power of granting their own money, or no shadow of liberty could subsist.' The principle was that the consent of those who were expected to pay it was essential to the validity of the tax." *Pollock v Farmers' Loan & Trust Company,* 157 US at page 556

And let this court resolve that in the future it will commence every term thinking of the Constitution and with the following caveat in mind:

> "Ye shall not add as to the word which I command you, neither shall ye diminish ought from it * * *." *Deuteronomy* 4:2

Lastly; the United States Constitution states in the First Amendment, the original Bill of Rights that every citizen has the right to petition its government for redress of grievances. The First Amendment states the following:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peacably to assemble and to petition the government for a redress of grievances."

Petitioner has followed his conscience and the dictates of reason, logic, and Godly principle; yet he is now being twice victimized. Once in the taking of his property through much cost and consternation and now in sanctions placed upon him for airing his grievances.

Those who are charged with the Constitutional duty of protecting Life, Liberty, and Property are now taking it.

I believe with all that is within me that this is wrong. The First Amendment to the United States Constitution says as in a Ninth Circuit case, SHERAR v CULLEN, that there should be no sanction or penalty imposed on one because of his exercise of Constitutional Rights.

> "The See and Reisman decisions, and the statutory procedures of §7402(b), reflect the obvious concern that there be no sanction or penalty imposed upon one because of his exercise of constitutional rights."
> *Sherar v Cullen*, 481 F2d 945 (1973)

To this Petitioner, there is no difference; What has been done to me by the placing on of Sanctions is WRONG!

PSALM 43

> "JUDGE me, O God, and plead my cause against an ungodly nation: O deliver me from the deceitful and unjust man."
>
> AMEN!

CONCLUSION

For the foregoing reasons, the petition for a Writ of Certiorari should be granted.

Respectfully submitted,

LAWRENCE D. CARVER
In Propria Persona
469 E. Baker Street
Clawson, Mich. 48017
Phone: (313) 956-3233

Dated:
January 4, 1985

APPENDIX

Appendix A

No. 83-1625

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LAWRENCE D. CARVER, *Plaintiff-Appellant*	)	
v.	)	Filed Oct 10, 1984
UNITED STATES OF AMERICA, *Defendant-Appellee*	)	**ORDER**

BEFORE: ENGEL, MERRITT and KRUPANSKY, *Circuit Judges*

This appeal has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. After examination of the record and the briefs filed by the parties, the panel agrees unanimously that oral argument is not needed. Rule 34(a), Federal Rules of Appellate Procedure.

This is an appeal from the district court's dismissal of appellant's action for failure to state a claim upon which relief can be granted. The appellant alleged that $3,848.34 was unconstitutionally withheld from his wages by the internal revenue service. Specifically he argues that wages are the "source" of his income and not "income" under the tax laws. Consequently, he argues that the source (wages, salaries, etc.) of the income is free of any tax. In addition, he also asserts that a tax on wages abridges one's common right to follow a chosen vocation which is not a state conferred privilege. Therefore, the wages are not subject to taxation under the Sixteenth Amendment.

The Sixteenth Amendment broadly grants Congress the power to collect an income tax regardless of the source of the taxpayer's income. *United States v. Silkman*, 543 F.2d 1218 (8th Cir. 1976). The contention that wages are exempt from taxation is totally frivolous; many cases clearly hold that wages are taxable. *Funk v. C.I.R.*, 687 F.2d 264 (8th Cir. 1982); *United States v. Romero*, 640 F.2d 1014 (9th Cir. 1980); *Lonsdale v.*

C.I.R., 661 F.2d 71 (5th Cir. 1981). Consequently, both of appellant's arguments are without merit.

The appellees have urged that the appellant be sanctioned pursuant to Rule 38, Federal Rules of Appellate Procedure. Rule 38 provides that if the appeal is frivolous, the appellee may be awarded double costs. An appeal is considered frivolous if the result is obvious or the appellant's arguments of error are wholly without merit. *McConnell v. Critchlow*, 661 F.2d 116 (9th Cir. 1981.) In view of the meritless arguments set forth by the appellant, it appears that the sanction of double costs is appropriate. See *Knighten v. C.I.R.*, 702 F.2d 59 (5th Cir. 1983).

Accordingly, it is ORDERED that the judgment of the district court be affirmed pursuant to Rule 9(d)2, Rules of the Sixth Circuit and that the appellant be charged with double costs pursuant to Rule 38, Federal Rules of Appellate Procedure.

ENTERED BY ORDER OF THE COURT
/s/ John P. Hehman
Clerk

Appendix B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAWRENCE D. CARVER,
Plaintiff,

-vs- Civil No. 82-74787

UNITED STATES OF AMERICA,
Defendant.

JUDGMENT OF DISMISSAL

For the reasons stated in the Court's Order of Dismissal entered and filed this date, defendant's motion to dismiss is GRANTED and the above case is DISMISSED.

(s) AVERN COHN
United States District Judge

Dated: July 13, 1983
Detroit, Michigan

Appendix B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAWRENCE D. CARVER,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

Filed
July 13, 1983

Civil No. 82-74787

ORDER OF DISMISSAL

I.

Before the Court is defendant's motion to dismiss, Fed. R. Civ. P.12(b)(6), and motion to stay discovery pending resolution of the motion to dismiss.

Plaintiff instituted suit in *pro per* on December 22, 1982 alleging that federal income taxes which were withheld from his wages for 1979 pursuant to Section 61 of the Internal Revenue Code (IRC), 26 U.S.C. § *et seq.*, and the following in the amount of $3,848.34, were withheld in violation of the United States Constitution. Defendant moves to dismiss on the grounds plaintiff does not plead a legally cognizable cause of action. Plaintiff has responded. For the reasons which follow the motion to dismiss will be granted.

II.

In 1979 plaintiff received $23,626.37 in wages from Chrysler Corporation. Although plaintiff reported the wages on his 1979 Individual Income Tax Return (Form 1040), he excised the word "Income" which normally appears in the left margin block opposite lines 8 through 22 of the Form 1040 and typed in the words "Gross Receipts" and subtracted a like amount as "Non-taxable Receipts". As a result, plaintiff's adjusted gross income (AGI) for 1979 was

$586.74.[1] Based upon this AGI plaintiff Carver requested a refund of the taxes withheld. When no refund was forthcoming plaintiff commenced this action.

III.

Plaintiff's underlying contention is that salaries, wages and compensation for personal services are not income but sources of income and as such are non-taxable. Plaintiff relies heavily on *Brushhaber v. Union Pacific Railroad Co.*, 240 U.S. 1 (1916), contending that *Brushhaber* held that wages are not included within the definition of income excluded from the apportionment clause of Article I, §2, Clause 3 of the United States Constitution[2] by the Sixteenth Amendment.[3] Plaintiff is wrong. The Supreme Court in *Brushhaber* never considered wages to be a problem under the apportionment clause because a tax on wages is either an indirect tax on the ability to labor or falls within the

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[1] This figure represents the sum plaintiff received from a combination of interest, a capital gain and other income (Chrysler T.S. Receipts) on which plaintiff does not contest he should be taxed.

[2] Article I, §2, Clause 3 provides:

"Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons."

[3] Amendment XVI reads:

"The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the States, and without regard to any census or enumeration."

common definition of income — gain from capital, labor or the combination of capital and labor.[4]

In *Miller v. Commissioner*, P-H Memo T.C., para 81,296, 81, 1019 (1981), the United States Tax Court declared, "[i]t has been clear for decades that wages are income". Likewise in *United States v. May*, 555 F. Supp. 1008, 1009 (E.D. Mich. 1983), Chief Judge Feikens of this district said, "[C]ompensation for labor or services, paid in the form of wages or salary, has been universally held by the courts of this republic to be income, subject to the income tax laws currently applicable", citing *United States v. Romero*, 640 F.2d 1014, 1016 (9th Cir. 1981).

IV.

Plaintiff's claim for refund does not state a cause of action. Accordingly, defendant's motion to dismiss is GRANTED. The motion to stay discovery is moot.

SO ORDERED.

(s) AVERN COHN
United States District Judge

DATED:
Detroit, Michigan

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[4] Ratification of the Sixteenth Amendment was the direct consequence of the decision in *Pollack v. Farmers' Loan & Trust Co.*, 158 U.S. 601 (1895), where the Supreme Court held the attempt of Congress in 1894 to tax income uniformly throughout the United States was unconstitutional. The Supreme Court reasoned that a tax on income derived from property was a "direct tax" which under Article I, §2 could only be imposed by the rule of appointment according to population. Even in *Pollack* however, the Supreme Court conceded that tax on income from professions, trades, employments or vocations were excise taxes and therefore valid. 158 U.S. at 635.